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No. 686

Supreme Court of the United States
OCTOBER TERM, 1943

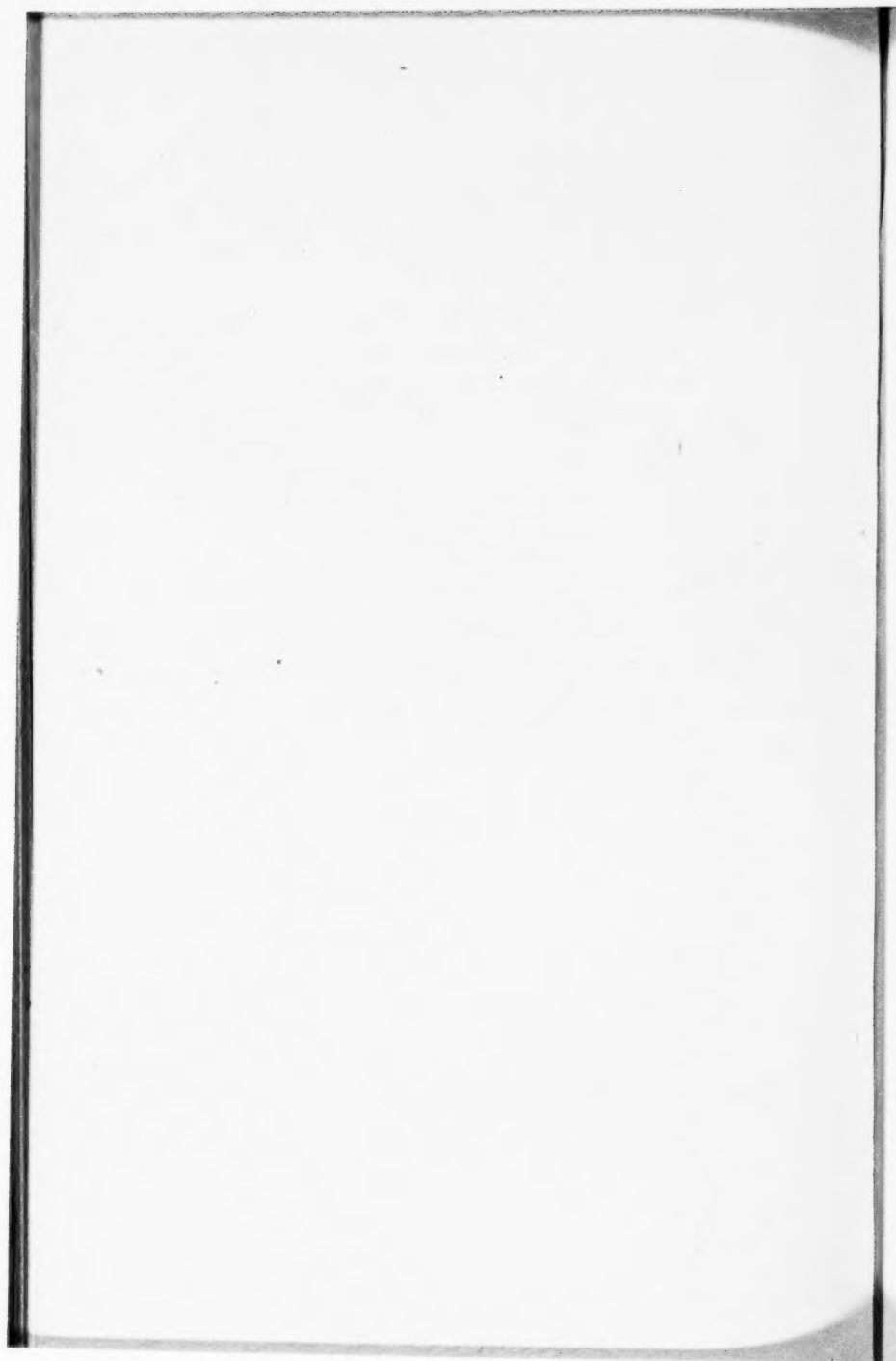
MILES NATIONAL FARM LOAN ASSOCIATION, *Petitioner*,

v.

THE FEDERAL LAND BANK OF HOUSTON, *Respondent*.

REPLY TO PETITION FOR WRIT OF CERTIORARI
TO UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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To Said Honorable Court:

The summary and statement of the matter involved as made by petitioner omits mention of the material facts: That the loans, the collection and servicing of which is involved, are represented by promissory notes payable to respondent, The Federal Land Bank of Houston (R., page 45); the notes are each endorsed and the payment thereof guaranteed by petitioner, Miles National Farm Loan Association. (R., pages 45 and 46.)

No question of destroying or dissolving respondent national farm loan association or of attempt by The Federal Land Bank of Houston to coerce it to merge with another national farm loan association is involved.

No question of contractual right of the association

to collect and service the loans is involved and none was claimed by petitioner in the Circuit Court of Appeals. (R., page 119.)

The case involves merely the question of who has the right under the Federal Farm Loan Act and under general principles of law to make collections on and service notes payable to The Federal Land Bank of Houston and owned by it.

The opinion of the Circuit Court of Appeals is published in 139 Federal Reporter, 2nd series, pages 422-424.

Reasons Why the Writ Should Be Denied.

(1) This Court in the following cases has considered the organization, operations, and functions of Federal land banks and the national farm loan associations and their relationship to each other:

Smith v. Kansas City Title and Trust Company et al., 255 U. S. 180.

Federal Land Bank v. Gaines, 290 U. S. 247.

Federal Land Bank v. Priddy, 295 U. S. 229.

Knox National Farm Loan Association v. Phillips, 300 U. S. 194.

Federal Land Bank v. Bismarck Lumber Company, 314 U. S. 95.

The above cases leave no doubt or uncertainty as to the relationship of a land bank and national farm loan association within its district. Each is a distinctly different corporation. Neither is by virtue of the Federal Farm Loan Act an agent of the other.

In *Federal Land Bank v. Gaines*, 290 U. S. 247,

this Court construed the Federal Farm Loan Act to contemplate that the Federal Land Bank was to be the lender and as lender it was to become the owner of the note and the mortgage in which it was named respectively as payee and mortgagee; the maker of a note and the association by its endorsement agreeing to become liable for payment of the note were to become co-obligors on the note.

It was held also in the *Gaines* case that a national farm loan association when acting in the furtherance of its duties under U. S. C. Sections 714 and 761 in disbursing proceeds of a Federal land bank loan to a borrower was not acting as agent for the land bank.

In *Federal Land Bank v. Bismarck Lumber Company*, 314 U. S. 95, this Court in discussing the functions and operations of Federal land banks and national farm loan associations said (314 U. S. 102):

“As a part of their general lending functions, the land banks are authorized to foreclose their mortgages and purchase the real estate at the resulting sale.”

The opinion of the Circuit Court of Appeals is in harmony with the previous announcements of this Court as to the relationship and functions of the Federal Land Bank and the national farm loan associations.

(2) The question involved in the instant case is answered by application of the principles announced by this Court in the case of *Federal Land Bank v.*

Gaines, 290 U. S. 247, and *Federal Land Bank v. Bismarck Lumber Company*, 314 U. S. 95.

Section 781, Title 12, U. S. C., enumerates certain powers which every Federal land bank shall have, and one of those powers enumerated in Sub-section Third, hereinabove quoted, is:

“* * * to empower national farm loan associations or duly authorized agents to collect and immediately pay over to said land bank the dues, interest, amortization installments, and other sums payable under the terms and conditions and covenants, of the mortgages and bonds secured thereby. * * *”

Section 714 U. S. C. provides:

“It shall be the duty of the secretary-treasurer of every national farm loan association to act as custodian of its funds and to deposit the same in such bank as the board of directors may designate to pay over to borrowers all sums received for their account from the Federal land bank upon first mortgages as in this chapter prescribed and to meet all other obligations of the association subject to the orders of the board of directors and in accordance with the by-laws of the association. It shall be the duty of the secretary-treasurer acting under the direction of the national farm loan association to collect, receipt for, and transmit to the Federal land bank payments of interest, amortization installments, or principal arising out of the loans made through the association. * * * .”

Facts in the case *Federal Land Bank v. Gaines*, 290 U. S. 247, were: Respondent Gaines applied to The

Federal Land Bank of Columbia through the Columbus National Farm Loan Association for a loan, and at the same time applied for membership in the national farm loan association. She executed promissory note to The Federal Land Bank of Columbia secured by a mortgage upon her land, both of which she delivered to the land bank. The note was endorsed and payment thereof guaranteed by the association. The land bank check for the amount of the loan payable to the secretary-treasurer of the association and to Mrs. Gaines was delivered to the association. The check was deposited by the association in a commercial bank to the credit of the association. The commercial bank immediately after collecting the check closed its doors and the funds were not available to the association nor to Mrs. Gaines. The suit was brought by Mrs. Gaines to cancel the mortgage given by her as invalid for want of consideration.

The question involved was whether or not when the association, as authorized by Section 761, Title 12, U. S. C., received from the Federal land bank funds advanced by the land bank to be delivered to a borrower, by the association's secretary-treasurer acting pursuant to Section 714, Title 12, U. S. C., it did so as an agent of and for the Federal land bank. This Court held not so, stating at page 254:

"The State Court rested its decision on the characterization of the association as a public agent but it did not hold that the association was in any sense an agent of the lender bank. It could not have well done so for neither the provisions of the Federal Farm Loan Act nor the

particular circumstances which attend the loan in the present case gave the petitioner bank any right of control over the association or any power to recall the check or its proceeds after its delivery and collection. The association was controlled by directors elected by its own members who like the respondent were borrowers. After the check was delivered to the association it passed completely from the control of the lender and into the exclusive control of the payees (borrower and association) who were the obligors of the mortgage and debt."

Thus this Court has held that when the secretary-treasurer of the association carrying out the functions of the association performs the duty set out in the first sentence of Section 714 that he is not performing that duty for the land bank, but for the national farm loan association. The duty stated in the second sentence, that is, "to collect, receipt for, and transmit to the Federal land bank payments of interest, amortization installments, or principal arising out of loans made through the association" is of the same nature and performed under the same circumstances and arrangements, and it follows that the same rule is applicable to both functions.

The duty of the secretary-treasurer set out in Section 714 is not performed for the land bank unless the land bank exercising the authority granted it by Section 781, U. S. C., Paragraph Third, "to empower national farm loan associations, or duly authorized agents, to collect and immediately pay over to said land banks the dues, interest, amortization install-

ments, and other sums payable under the terms, conditions and covenants of the mortgages and bonds secured thereby" empowers the association to act for it.

The Circuit Court of Appeals in the instant case held that a national farm loan association may collect interest and amortization installments due by its members on loans endorsed by it and may remit the items collected to the land bank, but that in so doing it did not act as agent for the Federal land bank but on its own behalf and for its borrower-members. To that extent the question involved in the instant case involves the application of the rule announced in the *Gaines* case, and the question is controlled and decided by that case.

In *Federal Land Bank v. Bismarck Lumber Co.*, 214 U. S. 94, this Court in discussing the functions and operations of Federal land banks and national farm loan associations at page 102, said:

"As part of their general lending functions the land banks are authorized to foreclose their mortgages and purchase the real estate at the resulting sale."

The Circuit Court of Appeals in holding that The Federal Land Bank of Houston had the right to collect the amount due and owing to it on loans endorsed by the national farm loan association merely applied the principle announced in the *Bismarck Lumber Company* case. The holding that The Federal Land Bank of Houston had the right to collect the amount due and owing it on loans endorsed by the national farm loan association naturally followed from the fact

that the land bank is the lender, as it was stated to be by this Court in the *Gaines* case and from the announcement by this Court in the *Bismarck Lumber Company* case that the land banks are authorized to foreclose their mortgages.

Therefore, the question of whether or not a national farm loan association has the right to collect and service for The Federal Land Bank of Houston notes payable to and owned by said bank and endorsed by said association against the will of the land bank and without such interference as might result from the Federal Land Bank making its own collections, has actually been passed upon by this Court if not in fact, at least in principle.

(3) Petitioner substantially admits the correctness of the opinion of the Circuit Court of Appeals.

Petitioner in its supporting brief argues that the land bank and a national farm loan association are distinct corporate entities. It further argues that when the secretary-treasurer carries on the business of the association, he is acting for and on behalf of the member-borrowers, and when the association acts in regard to its loans, either by collecting payments thereon from its members, or otherwise, that it is acting for itself and its borrower-members and not for The Federal Land Bank of Houston. The opinion of the Circuit Court of Appeals recognizes the correctness of this argument by saying (139 Fed. (2d) 224):

“We think, however, the duty laid on the secretary-treasurer of the association to collect and remit is for the safety of the association as guar-

antor and for the convenience of the member borrowers. The Secretary Treasurer is under bond. Payments to him by the borrower are not payments to the Bank until remitted, unless the Bank has empowered the Association to collect for it. If borrowers prefer to remit direct to the Bank they may. If the Bank prefers, it may request direct payments, but cannot prevent the borrowers from paying through their association if they wish to. That this is the relationship between the Bank and the association is substantially ruled in *Federal Land Bank v. Gaines*, 290 U. S. 247; 54 Sup. Ct. 168; 78 L. Ed. 298. In that case it was the 'duty of the Secretary Treasurer * * * to pay over to borrowers all sums received for their account from the Federal Land Bank upon first mortgage,' 12 U. S. C. A., Sec. 714, but the duty was held to be owing to the borrowing members of the Association, so that the Bank was not responsible for his default."

Thus we think the Circuit Court of Appeals granted petitioner the right to collect, which it argues it is entitled to. The Circuit Court of Appeals merely denied it the right to do so for and on behalf of the bank, and held that the association was not entitled to an injunction restraining the Federal Land Bank from collecting and servicing its own loans.

Petitioner complains of what it mentions as a plan of the bank to destroy local associations through grouping and consolidation. That matter is not raised by their pleading, was not raised in the trial court, nor in the Circuit Court of Appeals, and is not involved in this case. Actually this matter about which petitioner complains is not in anywise involved in

this case. Petitioner purports to set up as a question presented the question of whether or not the Miles National Farm Loan Association may make collections of installments on loans endorsed by it, yet that particular question was answered in favor of the association by the Circuit Court of Appeals.

(4) The rights of petitioner and respondent are clearly defined under the previous decisions of this Court and the decision of the Circuit Court of Appeals in the instant case.

There is no provision in the Federal Farm Loan Act (Title 12, Chapter 7, U. S. C.) which expressly or by implication denies a Federal land bank the right to collect payments owing it on obligations executed to it, payment of which are guaranteed by a national farm loan association. This Court in the *Gaines* case stated that that Act plainly contemplated that the land bank was to be the lender and as the lender it was to become the owner of the note and mortgage in which it was named respectively as payee and mortgagee. This Court further stated in that case that the association by endorsement and agreement to become liable for the payment of the notes was in a position of a surety or guarantor. In the *Bismarck Lumber Company* case, this Court stated that the land bank had authority to foreclose its mortgage. In the *Gaines* case the Court recognizes that a national farm loan association in receiving from the bank loan proceeds to be disbursed to a borrower and in performing functions incidental to closing the loan does so for itself and on behalf of its borrower-members. The Circuit

Court of Appeals in the instant case recognized and merely applied the announcements of this Court in each of those cases. It held that the national farm loan association acting on its own behalf and for the convenience of the borrower members may make collections of sums owing the Federal land bank in the loan for which it is a surety and guarantor. That payments made to the national farm loan association are not payments to the bank until remitted unless the bank has empowered the association to collect for it. It held that the bank may request that payments be made direct to it or its duly authorized agent; that the borrower may make his payments either to the association to be transmitted by it to the bank or may make his payments directly to the bank; that the bank cannot prevent the borrowers from paying their association if they wish but must accept payment if tendered through the association; but the Circuit Court, as obviously it should have, held that the association did not have the exclusive right to collect and service loans of the Federal land bank which loans were owned by and payable to the Federal land bank.

The land bank when it collects and services the notes owned by and payable to it acts simply as any other owner of a note acts in doing the same things. It is a lender and payee asserting a contractual right to be repaid by the person obligated to repay it. When the association, which is a guarantor and co-obligor, collects it does so as a surety and guarantor to protect itself against loss because of its endorsement and guaranty. These rights are fundamental.

The holding of the Circuit Court of Appeals is not

confusing or indefinite, but is in keeping with the Federal Farm Loan Act, with the constructions of the Act by this Court, and with general principles of law.

WHEREFORE, Respondent prays that said petition for Writ of Certiorari and for review on Writ of Certiorari be in all things denied.

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A copy of this brief has been furnished Scot Snodgrass, San Angelo, Texas, attorney for petitioner.

DAN MOODY.

